

IN RE: Thomas Garofalo)
Map131-13-0, Parcel 4.00, Sl. 006) Davidson County
Residential Property)
Tax Year 2006)

Statement of the Case

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$155,000	\$314,100	\$469,100	\$117,275

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on November 14, 2006, at the Division of Property Assessment's Office. Present at the hearing were Thomas Garofalo, the taxpayer who represented himself, and Mr. Jason Poling, Residential Appraiser, Division of Assessments for the Metro. Property Assessor.

The assessor contends that the property should be valued at \$469,100 based upon the action of the Metropolitan Board of Equalization and four (4) comparable sales that

were introduced and marked as the County's exhibit number 2 as part of the record in this cause. The germane issue is the value of the property as of January 1, 2006.

The basis of valuation as stated in T.C.A. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values"

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

The sales comparison approach is considered the most reliable method of determining the market value of residential property. The representative from the County showed through his comparable sales that the County's values are within range of the County Board's values¹.

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$ \$469,100 based upon the presumption of correctness attaching to the decision of the Davidson County Board of Equalization.

Additionally, Mr. Garofalo argument for equal treatment is without merit. The case law is replete with cases that essentially hold that it is of no consequence how much or how little your neighbors' property is valued but being able to demonstrate by competent evidence the fair market value of your own property that is essential in proving the County Boards values are incorrect.

¹ The comparable sales actually showed the value to be \$473,400 the County did not request the values be increased only that the County Board's valued be maintained.

As the Assessment Appeals Commission noted in *Payton and Melissa Goldsmith*, Shelby County, Tax year 2001, in quoting the Tennessee Supreme Court in the case of Carroll v. Alsup, 107 Tenn. 257, 64 S.W.193 (1901):

It is no ground for relief to him; nor can any taxpayer be heard to complain of his assessments, when it is below the actual cash value of the property, **on the ground that his neighbors' property is assessed at a less percentage of its true or actual value than his own.** When he comes into court asking relief of his own assessment, he must be able to allege and show that his property is assessed at more than its actual cash value. He may come before an equalizing board, or perhaps before the courts, and show that his neighbors' property is assessed at less than its actual value, and **ask to have it raised to his own**, . . . (emphasis supplied)

In yet another case, the administrative judge finds that the April 10, 1984, decision of the State Board of Equalization in *Laurel Hills Apartments, et. al.* (Davidson County, Tax Years 1981 and 1982), holds that "as a matter of law property in Tennessee is required to be valued and equalized according to the "Market Value Theory'." As stated by the Board, the Market Value Theory requires that property "be appraised annually at full market value and **equalized by application of the appropriate appraisal ratio . . .**" *Id.* at 1.(emphasis added)

The Assessment Appeals Commission elaborated upon the concept of equalization in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:

In contending the entire property should be appraised at no more than \$60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more under appraised than average **does not entitle him to similar treatment.** Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of "comparables" but has not **adequately indicated how the properties compare to his own in all relevant respects.** . . . (emphasis added) Final Decision and Order at 2.

See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were under appraised . . ." Final Decision and Order at 3.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981).

With respect to the issue of market value, the administrative judge finds that Mr. Garofalo simply introduced insufficient evidence to affirmatively establish the market value of subject property as of January 1, 2006, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$155,000	\$314,100	\$469,100	\$117,275

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 23rd day of January, 2007.

A handwritten signature in black ink, appearing to read "Andrei Ellen Lee", written over a horizontal line.

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Thomas Garofalo
Jo Ann North, Property Assessor